

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SAVAGE,
Plaintiff,
v.

No. C 07-6076 SI

**ORDER GRANTING DEFENDANTS’
MOTION FOR JUDGMENT ON THE
PLEADINGS**

COUNCIL ON AMERICAN-ISLAMIC
RELATIONS, INC., COUNCIL ON
AMERICAN-ISLAMIC RELATIONS ACTION
NETWORK, INC., COUNCIL ON
AMERICAN-ISLAMIC RELATIONS OF
SANTA CLARA, INC., and DOES 3-100,
Defendants.

Defendants’ Rule 12(c) motion for judgment on the pleadings came on for oral argument on April 7, 2008. Having considered the arguments of the parties and papers submitted, the Court hereby GRANTS defendants’ motion on both causes of action.

BACKGROUND

Plaintiff Michael Weiner, using the name “Michael Savage,” is the host and star of “The Savage Nation,” a nationally-syndicated radio program that plaintiff alleges “reaches eight million listeners per week.” Second Amended Complaint (“SAC”) at ¶¶ 1, 2. Plaintiff filed the instant suit in response to the use by defendants the Council¹ on American-Islamic Relations, Inc., the Council on American-Islamic Relations Action Network, Inc., and the Council on American-Islamic Relations of Santa Clara, Inc. (collectively “CAIR”), of a four-minute audio clip taken from plaintiff’s radio program. Plaintiff

¹This defendant was referred to as the “Counsel on American-Islamic Relations, Inc.” in the

1 alleges that defendants, in posting the audio clip on their website, engaged in copyright infringement
2 in an effort to raise money for terrorism and further a terrorist conspiracy. Plaintiff alleges that
3 defendants are connected to terrorist organizations operating abroad and that defendants are responsible
4 in some way for the September 11, 2001 terrorist attacks on the United States.

5 The 9/11 attacks were a staggering national tragedy. But it is important to note that this case is
6 not about 9/11 or efforts by the United States to prevent future terrorist activities. It is, rather, a dispute
7 about the ideas expressed in a four-minute audio clip and the protections of the First Amendment,
8 protections upon which plaintiff relies for his livelihood and the airing of his radio program.

9 The audio clip at issue in this dispute was taken from the two-hour long Savage Nation program
10 that aired on October 29, 2007, in which it is undisputed that plaintiff said the following, among other
11 things, about Muslims and about CAIR:

- 12 (1) "I don't want to hear one more word about Islam. Take your religion and shove it up your
13 behind."
- 14 (2) "They need deportation . . . You can take [CAIR] and throw them out of my country."
- 15 (3) "You can take your due process and shove it . . ."
- 16 (4) "[I]ts Muslims screaming for the blood of Christians or Jews or anyone they hate."
- 17 (5) "[Islam], a religion that teaches convert or kill, a religion that says oppress women, kill
18 homosexuals . . ."
- 19 (6) "The Quran is a document of slavery and chattel."

20 Ahmed Decl. at ex. A. In response to plaintiff's remarks, defendants posted on their website,
21 www.cair.com, a detailed criticism of plaintiff's anti-Muslim and anti-CAIR commentary, entitled
22 "National Radio Host Goes On Anti-Muslim Tirade." The web page explained defendants' objections
23 to plaintiff's remarks, *see id.*, and included an audio file containing the above-quoted excerpts from the
24 show that, when played in its entirety, runs for four minutes and thirteen seconds, SAC at ¶¶ 24. Plaintiff
alleges that defendants' unauthorized use of his remarks was taken out of context and that defendants'
"misportrayals" destroyed the value of his material and led to a loss of advertising revenue. SAC at ¶¶
at 34-35; *see also* Ahmed Decl. at exs. A & B.

Plaintiff filed his original complaint on December 3, 2007. He has amended it twice since then,
once as of right on December 25, 2007, and a second time by stipulation of the parties on February 14,
2008. The Second Amended Complaint alleges copyright infringement and civil RICO claims against
defendants. In a lengthy and polemical complaint, plaintiff alleges that CAIR misappropriated in excess

1 of four minutes of plaintiff's show for fund-raising purposes and that the segment was used in a manner
2 designed to cause harm to the value of the copyrighted material. He alleges that this misappropriation
3 was part of a criminal and political agenda to silence those speaking out against various facets of Islam.
4 Plaintiff alleges that defendants' furtherance of foreign terrorist interests is part of a larger conspiracy
5 of criminal activity that gives rise to his civil RICO claims. Generally, he alleges that defendants work
6 to raise funds for terrorist groups, aim to silence voices that oppose their views, and have board
7 members who are tied to alleged terrorist organizations. He further alleges that defendants are the
8 domestic branch of a foreign terror organization posing as a civil rights organization.

9 Further reference to relevant background facts and allegations is set forth below in the body of
10 the discussion.

11 LEGAL STANDARD

12 "After the pleadings are closed but within such time as not to delay the trial, any party may move
13 for judgment on the pleadings." Fed. R. Civ. P. 12(c). "Judgment on the pleadings is proper when the
14 moving party clearly establishes on the face of the pleadings that no material issue of fact remains to
15 be resolved and that it is entitled to judgment as a matter of law." *Hal Roach Studios, Inc. v. Richard*
16 *Feiner & Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989). "For purposes of the motion, the allegations
17 of the non-moving party must be accepted as true, while the allegations of the moving party which have
18 been denied are assumed to be false." *Id.*

19 Although Rule 12(c) neither specifically authorizes nor prohibits motions for judgment on the
20 pleadings "directed to less than the entire complaint or answer . . . [i]t is the practice of many judges to
21 permit 'partial' judgment on the pleadings (e.g. on the first claim for relief, or the third affirmative
22 defense)." See William W. Schwarzer, A. Wallace Tashima & James M. Wagstaffe, *Federal Civil*
23 *Procedure Before Trial*, ¶ 9:340 (2001). "[C]ourts have discretion to grant a Rule 12(c) motion with
24 leave to amend." *Id.* ¶ 9:341.

When considering a motion on the pleadings, courts may consider exhibits submitted or
referenced in the complaint and matters that may be judicially noticed pursuant to Federal Rule of
Evidence 201. See, e.g., *Burnett v. Twentieth Century Fox Film Corp.*, 491 F. Supp. 2d 962, 966 (C.D.

1 Cal. 2007). Indeed, “documents specifically referred to in a complaint, though not physically attached
2 to the pleading, may be considered where authenticity is unquestioned.” *Id.* (citing *Daly v. Viacom, Inc.*,
3 238 F. Supp. 2d 1118, 1121-22 (N.D. Cal. 2002) (considering television program referenced in, but not
4 attached to, complaint).

5 DISCUSSION

6 I. Copyright Act claim

7 Plaintiff alleges copyright infringement by defendants because they “misappropriated copyright
8 protected material from [plaintiff] and made this material available on [their] website.” SAC at ¶ 27.
9 A prima facie case of copyright infringement exists because there is no dispute as to plaintiff’s
10 ownership of the copyrighted material and defendants’ copying of this material. *Hustler Magazine, Inc.*
11 *v. Moral Majority Inc.*, 796 F.2d 1148, 1151 (9th Cir. 1986). However, defendants argue that plaintiff’s
12 claim is barred as a matter of law by the doctrine of fair use, which “permits [and requires] courts to
13 avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity
14 which that law is designed to foster.” *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 577 (1994)
15 (internal quotation marks omitted) (alteration in original). Section 107 of the Copyright Act provides
16 that:

17 [T]he fair use of a copyrighted work . . . for purposes such as criticism [and] comment
18 . . . is not an infringement of copyright. In determining whether the use made of a work
19 in any particular case is a fair use the factors to be considered shall include –

20 (1) the purpose and character of the use, including whether such use is of a commercial
21 nature or is for nonprofit educational purposes;

22 (2) the nature of the copyrighted work;

23 (3) the amount and substantiality of the portion used in relation to the copyrighted work
24 as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. § 107.

Two cases are particularly relevant to evaluating fair use in the instant case. The *Hustler* case
involved a fundraising appeal sent by Moral Majority to thousands of donors. The mailer included a

1 complete copy of a parody published in Hustler Magazine, used by Moral Majority without Hustler's
2 permission. *See Hustler Magazine*, 796 F.2d at 1150. Although the use was tied to an incontroverted
3 fundraising and political purpose, the Ninth Circuit held that Hustler's copyright infringement claim was
4 barred by the doctrine of fair use. *Id.* at 1152-53, 1156. It found that Moral Majority had not sold the
5 copyrighted work as its own, but had used it for political comment about the plaintiff and to rebut the
6 plaintiff's personal attack. *Id.* at 1153. The court reasoned that individual and institutional defendants
7 may copy such portions of the work as is necessary to allow comprehensible comment in rebutting
8 derogatory information. *Id.* (citing § 107 legislative history, H.R. Rep. No. 94-1474, at 73 (1976),
9 *reprinted in* 1976 U.S.C.C.A.N. 5659, 5687). The Ninth Circuit concluded that Moral Majority's
10 copying of the entire parody was reasonably necessary to provide such comment, and held that the
11 public interest in allowing individuals and institutions a defense against derogatory attacks rebuts the
12 presumption of unfairness that otherwise might attach when a use is connected to a commercial purpose.
13 *Id.*

14 The second case of particular relevance here is *Campbell v. Acuff-Rose Music, Inc.*, in which
15 the Supreme Court considered whether fair use should apply to a situation in which a rap group created
16 a "shocking" parody of the song "Oh, Pretty Woman." *Campbell*, 510 U.S. at 572-73. The Supreme
17 Court held that the defendant's commercial parody, which copied portions of the plaintiff's copyrighted
18 song, constituted fair use. In reaching the decision, it considered whether the new work was
19 "transformative," embodying a different purpose, meaning, or message from the original work. *Id.* at
20 579. The court recognized transformative works as being "at the heart of the fair use doctrine," such
21 that the commercial purpose of the use was given less weight. *Id.* The defendant's parody was clearly
22 intended to ridicule the original, and the court found it irrelevant to evaluate whether the parody was
23 in bad taste. *Id.* at 582. The court further reasoned that the commercial character of a use does not bar
24 a finding of fairness because many permissible uses, such as comment, criticism, news reporting, and
teaching, are done for profit. *Id.* at 584.

25 The doctrine of fair use is evaluated as a "mixed question of law and fact." *Harper & Row*
Publishers, Inc. v. Nation Enters., 471 U.S. 539, 560 (1985). However, "[i]f there are no genuine issues
of material fact, or if, even after resolving all issues in favor of the opposing party, a reasonable trier

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